

LABOUR DEPARTMENT

The 30th October, 1984

No. 9/5/84-6Lab/7158.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the workmen and the management of M/s Sub-Divisional Officer, Siwani Development Sub-Division No. I, Tosham (Bhiwani).

BEFORE SHRI B.P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK

References No. 131 to 147 & 163 of 1981

between

Sarvshri Hari Singh, Meda Ram, Bhoop Singh, Kali Ram, Mangtu Ram, Nand Ram, Tulshi Ram, Tara Chand, Dalbir Singh, Hira Singh, Dharam Pal, Pokhar Ram, Har Pal, Parbhu Ram, Norang, Ram Chander, Sube and Nar Singh and the management of M/s Sub-Divisional Officer, Siwani Development Sub-Division No. I, Tosham (Bhiwani)

Present :—

Shri Bhalle Ram, A.R. for the workmen.

Shri B.N. Khetrapal, Law Officer, for the management.

AWARD

1. An industrial dispute reproduced below, having arisen between the workmen Sarvshri Hari Singh, Meda Ram, Bhoop Singh, Kali Ram, Mangtu Ram, Nand Ram, Tulsi Ram, Tara Chand, Dalbir Singh, Hira Singh, Dharam Pal, Pokhar Ram, Har Pal, Parbhu Ram, Norang, Ram Chander, Sube and Nar Singh and the management of M/s Sub-Divisional Officer, Siwani Development Sub-Division No. I, Tosham (Bhiwani), the Governor of Haryana, in exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, referred the same to this Court for adjudication,—vide Labour Department Gazette Notification No. ID/HSR/46/81/54487, ID/HSR/45/81/54493, ID/HSR/30/81/54499, ID/HSR/31/81/54505, ID/HSR/35/81/54511, ID/HSR/34/81/54517, ID/HSR/33/81/54523, ID/HSR/40/81/54529, ID/HSR/39/81/54535, ID/HSR/38/81/54541, ID/HSR/37/81/54547, ID/HSR/36/81/54553, ID/HSR/44/81/54559, ID/HSR/43/81/54565, ID/HSR/41/81/54571, ID/HSR/42/81/54577, ID/HSR/32/81/54583, all of dated 4th November, 1981 and No. ID/HSR/81/81/60678, dated 17th December, 1981. The terms of reference in all the cases are the same except the name of the workman respectively :—

Whether the termination of service of Shri Hari Singh was justified and in order ? If not, to what relief is he entitled ?

2. On receipt of the order of reference, usual notices were issued to the parties. The parties appeared. All the workmen alleged that they were appointed as *Beldar* by the respondent many years ago but their services were illegally terminated by the management on 30th September, 1980, in gross violation of the provisions of the Industrial Disputes Act, 1947.

3. In all the references, separate replies were filed by the respondent, completely controverting the claim of the workmen. Since these references are being decided on grounds other than merit, so I need not detail the pleas projected by the respondent.

4. On the pleadings of the parties, the following issues were framed for decision on 3rd June, 1982 :—

(1) Whether the respondent/management is not covered under the definition of Industry ? If so, to what effect ?

(2) Whether the termination of services of Shri Hari Singh was justified and in order ? If not, to what relief is he entitled ?

5. References No. 131 to 147 and 163 all of 1981 were ordered to be consolidated by my learned predecessor Shri B.L. Dalal,—vide his order, dated 4th August, 1982. He further directed that the proceedings shall be recorded in reference No. 131 of 1981.

6. After framing of the issues, some evidence was adduced by the management and before the same could be concluded, the learned Authorised Representative of the workmen Shri Bhale Ram made a statement in the

Court that in view of the full bench authority of the Hon'ble High Court of Punjab and Haryana reported in 1984 Lab. I.C. 1165 Om Parkash versus Management of M/s. Executive Engineer and another, the Irrigation Department which the respondent is, has been taken out from the purview of "Industry" as defined in section 2(j) of the Industrial Disputes Act, 1947, these references are bad in law. So, in view of the statement made by the learned Authorised Representative of the workmen and the full bench authority referred to above, the respondent Department is not a "industry" and as such, these references are bad in law. The same are answered and returned accordingly. There is no order as to cost. A copy of this award be placed upon the files of references numbers 132 to 147 and 163 all of 1981.

Dated the 5th September, 1984.

B.P. JINDAL,

Presiding Officer,
Labour Court, Rohtak.

Endorsement No. 131-147-163/81/3236, dated 1st October, 1984

Forwarded (four copies) to the Secretary to Government, Haryana, Labour & Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

B.P. JINDAL,

Presiding Officer,
Labour Court, Rohtak.

No. 9/5/84-Lab/7149.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the workmen and the management of M/s Executive Engineer, Drainage Mechanical Division, Housing Board Colony, Rohtak.

BEFORE SHRI B. P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK

Reference No. 175 of 1980

between

SHRI TARA CHAND, WORKMAN AND THE MANAGEMENT OF M/S EXECUTIVE ENGINEER, DRAINAGE MECHANICAL DIVISION, HOUSING BOARD COLONY, ROHTAK

Present—

Shri Bhagwan Dass, Advocate for the workman.

Shri K. L. Madan, Law Officer, for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, the Governor of Haryana referred the following dispute, between the workman Shri Tara Chand and the management of M/s. Executive Engineer, Drainage Mechanical Division, Housing Board Colony, Rohtak, to this Court, for adjudication,—vide Labour Department Gazette Notification No. ID/RTK/36-80-38248, dated 22nd July, 1980 :—

Whether the termination of services of Shri Tara Chand was justified and in order? If not, to what relief is he entitled?

2. On receipt of the order of reference, usual notices were issued to the parties. The parties appeared. The workman alleged that he was appointed as Operator on 16th August, 1975, in the Mechanical Division, Canal, Rohtak, but his services were illegally terminated on 17th May, 1979, without notice or payment of retrenchment compensation as envisaged under section 25-F of the Industrial Disputes Act, 1947.

3. A reply was filed by the respondent, in which, preliminary pleas projected were, but that the reference is bad in law for non-joinder and mis-joinder of proper parties and that the claim is not competent against the Executive Engineer, Mechanical Drainage Division, Rohtak, who is not juristic person and the

respondent is not an "Industry" as defined in section 2(j) of the Industrial Disputes Act, 1947 and that no industrial dispute exists between the parties and further the workman is estopped from raising the present dispute by his acts and conduct and that the applicant is not represented by a competent authority. On merits, it is alleged that the applicant was appointed on purely work-charge basis and further more the applicant remained absent from duty from 17th May, 1979 and as such his services are deemed to have been terminated. So, it is pleaded that the respondent did not infringe the provisions of the Industrial Disputes Act, 1947.

4. In the replication filed, the workman controverted the various pleas propounded by the respondent.

5. On the pleadings of the parties, the following issues were settled for decision on 3rd March, 1981 :—

1. Whether the reference is bad in law for nonjoinder and misjoinder of the proper party ?
2. Whether the respondent is an Industry and there exists an industrial dispute ?
3. Whether the workman remained willfully absent and as such he is estopped to raise the demand leading to the dispute ?
4. Whether the workman is represented by the competent authority ?
5. Whether the termination of services of Shri Tara Chand was justified and in order ? If not to what relief is he entitled ?
6. Both the parties were allowed to produce their evidence. I need not discuss the oral evidence led by the parties, because this reference is being disposed of on the ground by the respondent is not an "Industry" as defined in section 2(j) of the Industrial Disputes Act, 1947.

Issue No. 2 :

7. The learned legal adviser of the respondent Shri K.L. Madan contended that this Court need not discuss the other issues as the respondent has been taken out of purview of an "Industry" as defined under section 2(j) of the Industrial Disputes Act, 1947. In that behalf, he referred to full bench authority of the Hon'ble High Court of Punjab and Haryana rendered in Civil Writ Petition No. 3747 of 1983 **Om Parkash V. management of Executive Engineer, SYL Division No. 7, Canal Colony, Kurukshetra and another**. The only umbrage taken to the ratio of this authority on behalf of the petitioner was that the petitioner was working in the Mechanical Division of the respondent, which is a wing of the Irrigation Department of the Government of Haryana and as such this authority will not apply in the case of petitioner. The contention is absolutely misconceived. Their Lordships have clearly held that the Irrigation Department of the Government of Haryana does not fall within the ambit of an "Industry" as defined in section 2(j) of the Industrial Disputes Act, 1947 and the respondent, in the present case, is a wing of the Irrigation Department and as such the ratio of the authority under reference will apply with full force to the facts of the present case. So, this issue is answered against the workman.

8. As already observed, that once it is held that respondent is not an "Industry" the reference to this Court would be bad in law and as such there is no necessity for the decision of other issues. The reference is answered and returned accordingly. There is no order as to costs.

Dated the 13th September, 1984

B. P. JINDAL,
Presiding Officer,
Labour Court, Rohtak.

Endst No. 175/80/3254, dated 1st October, 1984

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,
Presiding Officer
Labour Court, Rohtak.

The 13th November, 1984

No. 9/5/84-6Lab./7966.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad, in respect of the dispute between the workman and the management of M/s Bharat Carpets Ltd., Gurukul Industrial Estate, P. O. Amar Nagar, Faridabad.

IN THE COURT OF SHRI R. N. SINGAL, PRESIDING OFFICER, LABOUR COURT, FARIDABAD

Reference No. 190 of 1983

between

SHRI S. C. SHARMA, WORKMAN AND THE RESPONDENT MANAGEMENT OF M/S
BHARAT CARPETS LIMITED, GURUKUL INDUSTRIAL ESTATE, P.O. AMAR
NAGAR, FARIDABAD

Present—

Shri R. C. Sharma, for the workman.
Shri S. L. Gupta, for the respondent management.

AWARD

This reference has been referred to this court by the Hon'ble Governor of Haryana,—vide his order No. ID/FD/79/83/31034-39, dated 30th June, 1983, under section 10(i)(c) of the Industrial Disputes Act, 1947, for adjudication of the industrial dispute existings between Shri S.C. Sharma, workman and the respondent management of M/s Bharat Carpets Limited, Gurukul Industrial Estate, P.O. Amar Nagar, Faridabad. The term of the reference was :—

Whether the termination of service of Shri S.C.Sharma was justified and in order ? If not, to what relief is he entitled ?

The averments in the claim statement are briefly as follow s :—

On 12th Feburary, 1982 the claimant was issued a charge-sheet alleging that he had misbehaved with Miss Vibha Kochhar. He has submitted his reply through Miss Vibha Kochhar,—vide letter dated 17th December, 1982 and had requested the management that they had compromised the dispute. The management to pressurise Miss Vibha Kochhar, also charged her on 25th February, 1982, so that she may depose against him. Shri S. L. Gupta, Labour Law Practitioner, was appointed as enquiry officer. The request of the claimant to be represented by another person was turned down. The charge-sheet, enquiry notice and the dismissal letter were all signed by the director of the company, whereas the director is not competent to sign. The findings of the enquiry officer were preverse. The dismissal letter was issued in violation of the Standing Orders. His previous record was taken into consideration whereas the claimant was not given the opportunity to explain the same. The dismissal of the claimant is challenged on the ground that the claimant has been made victim of groupism. That report was obtained from Miss Vibha Kochhar, under coercion, that in view of the compromise no notice could be taken on the quarrel. That Miss Vibha was joined as a co-accused and threatened to be dismissed. That the Director of the respondent was not competent to sign. That no opportunity was given to the claimant to explain the previous record. It is further stated that enquiry on the basis of which he was dismissed was bad in law.

The management has contested this reference. It is alleged that the claimant was dismissed from service during the pendency of Industrial Dispute before the Industrial Tribunal. An application under section 33-C(2) was filed before the Industrial Tribunal and the Industrial Tribunal had held that the enquiry was fair and proper and hence the dismissal was upheld. It is alleged that the order of the Industrial Tribunal operates as resjudicata.

On facts it is alleged that the claimant misbehaved Miss Vibha Kochhar, the only woman employee, employed by the respondent. The charges were admitted by the claimant. It is denied that writing of Miss Vibha was taken under pressure. Rather she wrote letter, dated 10th October, 1982, out of fear. It is denied that the claimant wanted to be represented by a representative. Objections are taken that the respondent has its certified standing order and that the claimant committed an act of grave mis-conduct while he was charge-sheeted ; that the enquiry officer found him guilty of misconduct and hence the dismissal orders were passed. While passing the dismissal order his previous record was also taken into consideration. Objection was further taken that the claimant is gainfully employed.

The allegation of the management was denied by the claimant in the rejoinder. The parties contested the reference on the following issues :—

- (1) Whether the order of the Industrial Tribunal holding the domestic enquiry fair and proper, would operate as resjudicata in these proceedings?
- (2) Whether the enquiry held against the workman is fair and proper ? (OPM)
- (3) As per reference ?

I have heard both the parties and gone through the evidence produced by the parties and my findings on the issues are as under :—

Issue No. 1.—It is contened that under section 33-2(b) the Industrial Tribunal had granted sanction of dismissal. Hence this order operates as resjudicata.

This contention of the representative of the management has no force. Scope of this section is different. The scope of application under section 33-2(b) of the Industrial Tribunal is to see the *prima facie* of the case. But this court under section 10 of the Industrial Disputes Act has to weigh the evidence thoroughly. This issue is decided against the management.

Issue No. 2.—It is contended that no fair and proper enquiry was held and that the claimant was not given opportunity to defend himself. That he was not given opportunity to produce evidence and that enquiry

was conducted by the legal practitioner. All these averments have no force. The enquiry was conducted on the same date by the enquiry officer on the request of the claimant. Enquiry proceeding, Exhibit M-4 proves it. The enquiry proceedings at page 13 also shows that Shri S. C. Sharma closed his evidence as he has no witness to be examined. This clearly shows that the claimant was given full opportunity and proceedings closed on the same date on the request of the claimant.

It is contended that the enquiry officer was legal practitioner. It also does not vitiate the enquiry. He is not able to show any law on the point that the enquiry conducted by the legal practitioner is vitiated. There is no evidence that the claimant wanted to be represented and he was not allowed to be represented. In these circumstances I hold that the enquiry held against the workman is fair and proper.

Issue No. 3.—As against the order of this dismissal, it is contended that the order was passed by the Director of the company. Director has no power to issue the charge-sheet and to dismiss the claimant. This has force. The representative of the management has relied upon sub-clause 4 of clause 7 on page 5 of the certified standing order in which the management is competent to dismiss the workman. The management has been defined as :—

“Management means the Managing Director, any Director or the factory manager or any other person as may be authorised in this behalf.”

Hence, Shri R.N.Gupta, Director, was competent to dismiss the workman. There is no evidence that Shri R.N.Gupta was authorised in this behalf by the Board of Directors or by the Competent authority. Hence the dismissal order of the claimant is not legal.

The enquiry file shows that the claimant was charge-sheeted because he misbehaved with Miss Vibha Kochar. He had gone to make a telephone call, MW-2 Shri Bakshi has stated in the enquiry that the claimant shouted at Miss Vibha Kochar using abusive language that he would slap her. On this act of the claimant he was dismissed,—vide order, dated 24th/26th March, 1982. In the dismissal order his previous conduct has also been taken into consideration. The compromise letter of Miss Vibha Kochar, dated 18th February, 1982 and M-12 has not been taken into consideration rather she was charge-sheeted, which clearly shows that she was pressurised to withdraw the letter. The management charge-sheeted her for the same dispute but no action has been taken against her, rather she has been acquitted. Her charge-sheet clearly shows that the management wants to victimise the claimant.

The termination order Ex. M-1 clearly shows that the past record was taken into consideration while dismissing him. It was held in a case Binny Limited *versus* their workman 1972-LIC page 1141 that :—

“Where a delinquent is charged of a particular misconduct but the dismissal order is passed as a result of the cumulative effect of the particular misconduct charged as well as the past lapses for which opportunity to explain was not given, the order is not maintainable.”

It is also held by the Madras High Court in 1984-LIC NOC 78 page 38 that :—

“Held, failure to put the workman on notice of the past record which was relied upon in passing the order of dismissal, resulted in violation of the principles of natural justice. No doubt, it was open to the management to look into the past record of service. Nevertheless, if it was going to be used against the workman he should have been afforded an opportunity to have a say in the matter. That had not been done in this case. It was no use saying that the past records related to the earlier misconduct concerning which certain punishments are awarded and therefore, they were matters of record and were not required to be one again put to the workman. It was necessary to have put him on notice because it was the cumulative effect of that which led to the dismissal. But for the previous bad record, neither the management nor the Labour court would have inflicted the extreme punishment of dismissal.”

In view of the above-said judgements the claimant could not be terminated taking into the consideration his past conduct as his past conduct was not the subject-matter of the charge-sheet. Proper opportunity should have been given to him to explain as why his previous conduct should not be taken into consideration. Hence the dismissal order is illegal on this ground also.

It is contended by the representative of the management that misconduct of the claimant comes under clause 18, 34-33 of the certified standing order and this misconduct of the claimant specially with a lady workman is grave misconduct. Hence extreme punishment is justified. This contention is not fair. The misconduct of the claimant was not grave. Moreover both the workmen were charge-sheeted which shows that both of them were involved in altercation. Miss Vibha Kochar compromised with the claimant and written a letter of compromise. This compromise was not taken into consideration by the authority. It shows that the claimant was charge-sheeted to victimize him. In view of the above discussion, I find that the order

of termination was not justified and in order. I therefore, give the award that he is entitled to be reinstated with continuity of service and full back wages.

Dated, the 3rd October, 1984.

R. N. SINGAL,
Presiding Officer,
Labour Court, Faridabad.

Endst. No. 2579, dated 30th October, 1984.

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Department, Chandigarh as required under Section 15 of the Industrial Disputes Act.

R. N. SINGAL,
Presiding Officer,
Labour Court, Faridabad.

The 15th November, 1984

No. 9/5/84-6Lab./8091.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad, in respect of the dispute between the workmen and the management of M/s Goodyear India Limited, Ballabgarh :—

BEFORE SHRI R.N. BATRA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA,
FARIDABAD

Reference No. 62/1980

between

THE MANAGEMENT OF M/S GOODYEAR INDIA LIMITED, BALLABGARH AND ITS WORKMEN.

Present :—Shri S.S. Gupta for the workmen.

Shri Sat Pal for the management.

AWARD

In exercise of powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute between the management of M/s Goodyear India Limited, Ballabgarh and its workmen, to this Tribunal, for adjudication :—

- (1) Whether the supersession of Shri N.R. Unni is justified and in order ? If so, to what relief he is entitled ?
- (2) Whether the supersession of Shri V.K. Uppal is justified and in order ? If so, to what relief he is entitled ?
- (3) Whether the supersession of Shri B. M. Arora is justified and in order ? If so, to what relief he is entitled ?

2. Notices were issued to both the parties. The workmen in their claim statement, dated 4th January, 1981, alleged that Shri N.R. Unni was an important office-bearer of the Union and was entitled to be promoted to the post of Secretary to Factory Personnel Manager but the employer denied the said promotion to him in pursuance of its victimisation policy and that Shri P.D. Vermani was promoted instead which was neither justified nor in order ? It was further alleged that Shri V.K. Uppal was also an important office bearer of the Union and was entitled to be promoted to the post of Secretary to the Manager GMMC but in pursuance of its victimisation policy, the employer denied this promotion to him and that Shri L. Thiagarajan was made Secretary to Manager, GMMC which action of the employer was neither justified nor in order. It was then alleged that Shri B.M. Arora who was also an important office-bearer of the Union was entitled to be promoted to the post of Buyer, Raw Materials but he was not promoted and Shri A.S. Talwar was promoted in his place in pursuance of the victimisation policy of the employer. It was further prayed that Sarvshri N.R. Unni, Shri V.K. Uppal and Shri B.M. Arora be promoted with retrospective effect.

3. The management in their written statement of dated 17th March, 1981 pleaded that the dispute was covered by the settlement dated 31st January, 1978 and that according to Article 18 of the said settlement, the management, had a right to promote the workmen. It was further pleaded that the reference was not maintainable because the dispute had not been properly espoused by the requisite number of workmen. It was also pleaded that while making the appointment, the Management took into consideration all the relevant facts such as qualifications, suitability, dependability and competence of the candidate. It was denied that the workmen were victimised. It was further pleaded that Mr. Vermani was promoted as Secretary to Factory Personnel Manager with effect from 15th January, 1979. It was then pleaded that Shri L. Thiagarajan was promoted as Secretary to Manager, General Merchandise and Materials Control with effect from 1st September, 1978 and that the management took into consideration the case of Shri V.K. Uppal as well. It was denied that Shri V.K. Uppal was victimised, but, on the other hand, the job of Secretary was that of trust and confidence and was not in the channel of promotion. It was denied that Shri V.K. Uppal was an office-bearer of the Union at the relevant time. It was further pleaded that the post of buyer (raw-material) was given to Shri A.S. Talwar and that the case of Shri B.M. Arora was also considered. It was denied that any of the workmen was victimised. It was further pleaded that Mr. Talwar was promoted on 1st August, 1978 and was senior to Shri B.M. Arora. It was then pleaded that all the promotions were made *bona fide* after considering the suitability of the persons concerned for the jobs.

4. The workmen in their rejoinder, dated 12th September, 1981 reiterated the pleas taken in the claim statement.

5. On the pleadings of the parties, the parties, the following issues were framed on 23rd May, 1981 :—

- (1) Whether the present reference is hit by the settlement, dated 31st January, 1978 ? OPM
- (2) Whether the dispute was properly espoused ? OPW
- (3) Whether the supersession of Shri N.R. Unni is justified and in order ? If so, to what relief he is entitled ? OPM
- (4) Whether the supersession of Shri V.K. Uppal is justified and in order ? If so, to what relief he is entitled ? OPM
- (5) Whether the supersession of Shri B.M. Arora was justified and in order ? If so, to what relief he is entitled ? OPM

6. It may be mentioned that all the three workmen appeared in the witness-box and documents Exhibit W-1 to W-6 were tendered into evidence. The Management examined one witness and documents Exhibit M-1 to M-10 were tendered into evidence. After going through the evidence both oral and documentary and hearing the representatives of both the sides, my findings on the above issues are as under :—

Issue No. 1—

7. Shri C.S. Puri, Chief Personnel Manager of the respondent has appeared as MW-1 and he proved the photostat copy of the settlement Exhibit M-1, dated 31st January, 1978, arrived at between salary and hourly staff employees and the management. According to article 18 of this settlement, the promotions were to be made by the Management. It was argued on behalf of the workmen that according to Section 18(3)(c) of the Industrial Disputes Act, 1947, a settlement should be binding on all the parties to the industrial disputes and since the present claimants were not the parties to this settlement, therefore they were not bound by the said settlement. A perusal of this document would show that the settlement was arrived at between the elected representatives of salary and hourly staff and the management and that it was signed by the five employees of behalf of the staff and employees on the one hand and three officials of the management to the other hand. It is thus apparent that all the staff members were parties to this settlement because five employees signed this settlement on behalf of the staff/employees. Moreover Section 18(3)(d) of the Industrial Disputes Act, 1947, lays down that where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment as the case may be, to which the dispute relates on the date of the dispute and all the persons who subsequently become employed in that establishment or part, would be bound by this settlement. Consequently according to this provision, all the staff/employees are bound by the above settlement including the claimants and as such the management was competent to pass the orders of promotion in accordance with the terms of the settlement. It was also argued on behalf of the workmen that no norms and rules for promotions were framed by the Management and as such the promotions made by the Management were liable to be set aside. Reliance was placed on the rulings reported as *Workmen of Williamson Magor and Co. Ltd.*, versus *Williamson Magor and Co. Ltd.*, and another Vol. 60 F.J.R. page 5. In that case the management did not have any norm to determine how many clerks should be in each of the said grades or in each of the scales of pay; nor was there any fixed quota in the Special grade; nor there was any rule determining the number of vacancies to be filled by promotion or upgradation. This ruling is distinguishable on facts because no such contingency has arisen in the present case and the only question is whether the management was competent to promote

certain officials after superseding the claimants. The Management has proved that according to terms of the settlement copy Exhibit M-1, it was competent to do so. It is thus held that the present reference is hit by the settlement, dated 31st January, 1978 copy Exhibit M-1. The issue is decided accordingly in favour of the management.

Issue No. 2—

8. It was argued on behalf of the Management that present dispute was not espoused by sufficient number of workmen. The demand notice Exhibit W-1, dated 5th April, 1980 shows that the said notice was given by the Goodyear India Factory staff Employees Union Registered and was signed by its President, General Secretary, Organising Secretary, Secretary, Treasurer and other members. The demand notice was thus given by the Union and the case of claimants was thus espoused by sufficient number of the workmen. In the ruling reported as *Kartar Bus Service Ltd. and Gurdial Singh and Others*, 1963-I-LLJ-page 231, it is laid down that the validity of the reference has to be judged on the facts as they exist on the date of the reference. Consequently it is held that the dispute was properly espoused by sufficient number of workmen through their union. The issue is decided accordingly in favour of the workmen.

Issue No. 3—

9. It may be mentioned that the representative of both the parties stated that the dispute regarding Shri N.R. Unni had already been settled and no dispute was now left between the parties. Consequently this issue was not pressed by either side and the same is disposed of accordingly.

Issue Nos. 4 and 5—

10. Both these issues can be decided together conveniently. The Management has examined MW-1 Sh. C.S. Puri, Chief Personnel Manager who stated that the Management never victimised them due to their trade union activities and that Shri V.K. Uppal and B.M. Arora were considered for promotion in the year 1978 and that both of them were not the office-bearers of the union as per the list copy Exhibit M-2 received by the Management from the Union. He also proved the copy of service record of the employees Exhibit M-3 to M-10. Shri V.K. Uppal has appeared as WW-1 while Shri B.M. Arora as WW-3 and both of them deposed that they were superseded due to their being members of the Union. The documents Exhibit W-1 to W-6 have been proved by the claimants. Exhibit W-1 is the demand notice, dated 5th April, 1980. Exhibit W-2 is the letter dated 16th March, 1980 sent by Shri N.R. Unni to the Management. Exhibit W-3 is also the letter, dated 22nd January, 1979 sent by Shri N.R. Unni to the Management. Exhibit W-4 is the record of Shri N.R. Unni. Exhibit W-5 is the letter, dated 1st August, 1979 written by the Union to the Registrar Trade Union, Chandigarh while Exhibit W-6 is the letter dated, 11th August, 1978 written by the Management to the President of the Union informing them that promotion was the pre-rogative of the Management and that all the relevant facts were taken into consideration by the Management. The case of the Management therefore is that the case of Shri V. K. Uppal and B.M. Arora were considered by the Management along with other workmen. WW-3 Shri B. M. admitted in cross-examination that Shri A.S. Talwar, who was promoted in his place, was senior to him. Regarding the case of Shri V.K. Uppal the Management had pleaded that the post of Secretary to Manager General Merchandise and Material Control was that of trust and confidence and after considering the competency, and suitability, Shri L. Thiyagarajan was selected as Secretary. The Management thus considered the cases of Shri V.K. Uppal and B.M. Arora along with other workmen and then passed the order of promotion, after taking into consideration the qualifications suitability, dependability and competence of the candidate. The letter copy Exhibit M-2 dated 5th August, 1978 shows that neither Shri V.K. Uppal nor Shri B.M. Arora was the office-bearer of the union on that date. The promotion of Shri L. Thiyagarajan and Mr. A.S. Talwar took place on 1st September, 1978 and 1st August, 1978 respectively. According to the letter copy Exhibit M-2 Shri V.K. Uppal and Shri B.M. Arora were not the office-bearers of the Union at that time and as such the plea taken by these claimants that they were victimised being office-bearers of the Union cannot be accepted. In the ruling reported as *The Hindustan Lever Ltd. The Workmen*, 1974-Lab.I.C. 128, it is laid down that in the absence of a finding that the refusal of the Management to place a workman in the higher grade was on account of trade union activities or any unfair labour practice the Labour Court could not arrogate to itself the promotional function. In the ruling reported as *Shyam Lal and others versus Bir Singh and others*, 1973-Lab.I.C.959, it is laid down that in the absence of promotion rules, the Tribunal is not entitled to apply a rule of promotion and could interfere with the promotion only where it is actuated by unfair labour practice or *mala fide*. In the ruling reported as *Anand Swarup Misra and others versus M/s Indian Turpentine and Rosin Co. and others*, 1977 Lab. I.C. 584, the dispute between the parties was only one of upgrading and not one involving promotion. This ruling is distinguishable on facts. In the ruling reported as *Bharat Kala Kendra Private Limited versus R.K. Baweja and another*, 1981-Lab. I.C. 893, it is laid down that order of termination of service is not *mala fide* where an employer does not want to continue an employee who shows consistent indifference to work and discipline and gets annoyed when he is asked to give an explanation. Under all these circumstances, supersession of Mr. V.K. Uppal and Shri B.M. Arora was justified and in order. Issues Nos. 4 and 5 are decided accordingly in favour of the Management and as a consequence Shri V.K. Uppal and Shri B.M. Arora are not entitled to any relief. The award is passed accordingly.

Dated, the 23rd October, 1984,

R. N. BATRA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Endst. No. 1126, dated 31st October, 1984

Forwarded (four copies) to the Commissioner & Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

R.N. BATRA,

Presiding Officer,

Industrial Tribunal, Haryana,
Faridabad.

No. 9/5/84-6 Lab./8092.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad, in respect of the dispute between the workman and the management of M/s Shree Ganesh Synthetics Pvt. Ltd., Plot No. 10, Sector 25, Faridabad.

BEFORE SHRI R.N. BATRA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA,
FARIDABAD

Reference No. 277/1981

between

SHRI RAM CHANDER, WORKMAN AND THE MANAGEMENT OF M/S SHREE GANESH
SYNTHETICS PRIVATE LIMITED, PLOT NO. 10, SECTOR 25, FARIDABAD

Present:—

Shri M. K. Bhandari for the workman.

Shri S.D. Mishra for the Management.

AWARD

In exercise of powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute between Shri Ram Chander, workman and the management of M/s. Shree Ganesh Synthetics Private Limited, Plot No. 10, Sector 25, Faridabad, to this Tribunal for adjudication:—

Whether the termination of service of Shri Ram Chander was justified and in order? If not, to what relief is he entitled?

2. Notices were issued to both the parties. The claimant in his claim statement, dated 12th November, 1981, alleged that he was appointed as Weaver on 11th June, 1978 in the respondent factory and was drawing Rs. 550 per month. It was then alleged that on 21st November, 1980 he was given a suspension letter on the gate of the factory and was not allowed to enter the factory premises and that on 23rd November, 1980 he was served with a charge-sheet, when he gave his explanation. It was further alleged that from 7th December, 1980 to 28th February, 1981, a domestic enquiry was held against him which was not conducted in a fair and proper manner and no report of the finding of the enquiry was given to him. It was also alleged that on 8th April, 1981, respondent sent a letter asking him to join duty without the claim of back wages, and continuity of service, when the claimant sent a registered letter to the respondent on 10th April, 1981 in which he expressed his readiness to join duty with full back wages, but the respondent did not consider his request and terminated his services on 21st April, 1981 which was in violation of the provisions of Industrial Disputes Act, 1947. It was therefore, prayed that the claimant be reinstated with full back wages and continuity of service.

3. The respondents in their written statement, dated 3rd February, 1982 pleaded that the workman himself abandoned his job by not complying with the directions of the Management given in writing to him,—*vide* letter, dated 7th April, 1981 and did not report for duty within the stipulated period. It was then pleaded that the workman was suspended in consequence of serious misconduct on 21st November, 1980 and was charge-sheeted, when a domestic enquiry be held according to the rules and in a fair and proper manner and after completion of the said enquiry, the management received the findings of the Enquiry Officer, who found the workman guilty of all the charges. It was then pleaded that the Management perused the entire proceedings and before it could take action against the workman, he approached one of the directors of the company and tendered his apology due to which the claimant was let off with a warning and allowed to join duty,—*vide* letter, dated 7th April, 1981 but the claimant refused to accept the said letter. It was further pleaded that the Management sent another letter, dated 8th April, 1981 by registered A.D. to the workman along with the copy of the letter, dated 7th April, 1981 and separate letter was sent to the workman on his union address. It was then pleaded that the letter sent to the workman at his house address was received back as undelivered while the letter sent at the Union address was received by the workman on 10th April, 1981. It was pleaded that the workman did not report for duty. It was denied

that the workman sent any registered letter on 10th April, 1981 and since the workman did not join duty upto 18th April, 1981, the Management struck off the name of the claimant from roll and informed the workman accordingly,—vide letter, dated 21st April, 1981. It was further pleaded that since the workman abandoned his job wilfully he was not entitled to any relief.

4. The workman in his rejoinder, dated 7th May, 1982 reiterated the pleas taken in the claim statement.

5. On the pleadings of the parties, the following issues were framed on 21st May, 1982;—

- (1) Whether the workman abandoned his job by remaining absent from duty? If so, to what effect? O.P.M.
- (2) Whether the termination of service of Shri Ram Chander was justified and in order? If not, to what relief is he entitled? O.P.M.

6. The Management examined six witnesses and documents Ex. M-1 to M-11 were tendered into evidence while the workman examined three witnesses and documents Ex. W-1 to W-7 were tendered into evidence. After going through the evidence both oral and documentary and hearing the representatives of both the parties, my findings on the above issues are as under;—

Issue No. 1—

7. The Management has examined MW-1 Shri Dood Nath, Time Office Clerk of the respondent, who stated that the letter Ex. M-1 was received by him on 8th April, 1981 for being delivered to the claimant and that he gave the same to the claimant who refused to receive the same in the presence of witness and he made his endorsement. MW-2 Shri Ram Sabal, Security Guard of the respondent, stated that the claimant refused to receive the letter Ex. M-1 on 8th April, 1981 from Shri Dood Nath, MW-1. MW-3 Shri S.N. Tiwari, Director of the respondent Company stated that a charge-sheet was served on the claimant and that a domestic enquiry was held and on receipt of the findings of the Enquiry Officer, show-cause notice Ex. M-2 was issued by him. He further stated that thereafter the claimant came to his house and tendered apology and on 7th April, 1981, the claimant was asked to report for duty,—vide letter Ex. M-1 upto 18th April, 1981. He further stated that this letter as given by him to Shri R.S. Sharma, Manager for being delivered to the workman who told him that the claimant had refused to receive the said letter and stated that he would think over the matter and would tell the position. He further stated that on 8th April, 1981, the claimant refused to receive the letter on the ground that he was entitled to full back wages for the suspension period. He then stated that letter Ex. M-3 was sent to the claimant on 8th April, 1981 with which the copy of the letter, dated the 7th April, 1981 was enclosed Ex. M-1 but the claimant did not report himself for duty. He then stated that the strike started in the factory from 9th April, 1981 and that a settlement was arrived at on 21st April, 1981. He further stated that since the workman did not report for duty, his name was struck off from the roll,—vide letter Ex. M-5 but the said letter was received back as undelivered,—vide envelop Ex. M-6. MW-5 Shri R.S. Sharma, Manager of the respondent stated that a domestic enquiry was held against the claimant who met the Director at his house when the letter Ex. M-1 was issued but the claimant refused to receive the same even on 8th April, 1981 and thereafter another letter was sent to him along with a copy of the letter, dated 7th April, 1981 and since the claimant did not join duty, his name was struck off from the roll on 21st April, 1981. He was informed accordingly,—vide letter Ex. M-1.

8. Shri Ram Chander claimant appeared as WW1 who stated that he was charge-sheeted and that the domestic enquiry was held and the talk took place at the house of the Director of the Company. The Director told him that he would be re-employed but the claimant demanded full back wages with continuity of service. He stated that he did not tender apology and came to the office of the company on 7th April, 1981 and no letter was given to him on that date. He further stated that he received the letter, dated 8th April, 1981 and sent his reply by registered post,—vide postal receipt Ex. W-3 in which it was mentioned that the copy of the letter, dated 7th April, 1981 was not received by him. He further stated that he used to go to the gate of the factory from 7th April, 1981 to 21st April, 1981 but was not allowed to join duty and that the security people told him that the Director had stated that the claimant could join duty afresh and could not allow him back wages. He further stated that the strike started in the company from 9th April, 1981 and a settlement took place on 21st April, 1981 and that the settlement Ex. M-4 was signed by him as General Secretary. He further stated that he never refused to receive the letter Ex. M-1. He proved the documents. Ex. W-1 to W-7.

9. A perusal of above evidence would show that the claimant was charge-sheeted, when the domestic enquiry was held and show-cause notice Ex. M-2 was issued to him on 30th March, 1981 but instead of taking any action on the basis of report of the Enquiry Officer, a letter, dated 7th April, 1981 copy Ex. M-1 was issued by the Management according to which he was asked to join duty without back wages for the suspension period which had to be treated as absence from duty. The case of the management is that the claimant refused to receive this letter while the claimant has deposed that no such letter was offered to him. The management wrote another letter Ex. M-7 on 8th April, 1981 asking the claimant to join duty upto 18th April, 1981 failing which his name would be struck off from the roll. The claimant sent a reply to this letter on 10th April, 1981 copy Ex. W-2 in which it was mentioned that he was entitled to full back wages with continuity of service. In the written statement, the management denied having received this letter, dated 10th April, 1981 from the workman but in the witness-box, they admitted

receipt of this letter which was Ex. W-2. The facts therefore remains that the letter dated 10th April, 1981 was received by the Management and instead of sending any reply to this letter, the Management removed the name of the claimant from the roll and informed the claimant accordingly.—vide letter Ex. M-5, dated 21st April, 1981. As mentioned above, no action was taken against the claimant on the basis of the enquiry Clause 20(2) (d) of the Industrial Employment (Standing Orders) Punjab (Haryana First Amendment) Rules, 1969, lays down that where the period of suspension upto conclusion of the enquiry was sufficient punishment orders shall be passed to reinstate the workman and treating the period of suspension as punishment without any further payment for the period excepting the suspension allowance admissible; provided that this period of suspension shall not exceed 30 days. According to this rule, the period of suspension of punishment without payment of wages could not exceed one month. In the present case, the claimant was suspended on 21st November, 1980 and he was under suspension when the letters dated 7th April, 1981/8th April, 1981 were written. Consequently the period from 21st November, 1980 to 8th April, 1981 could not be treated as period of suspension as punishment without payment of wages because it exceeded one month. The letters, dated 7th April, 1981 and 8th April, 1981 further show that the stand taken by the Management was not in accordance with the rules when they asked the claimant to join duty without payment of back wages for the suspension period and continuity of service which exceeded one month.

10. The Management has removed the name of the claimant from the roll of the ground that he did not report himself for the duty upto 18th April, 1981 in accordance with the letters, dated 7th April, 1981 and 8th April, 1981 referred to above. Firstly, these letters were not issued in accordance with the Industrial Employment (Standing Orders) Punjab (Haryana first amendment) Rules, 1969 as mentioned above. Secondly, the strike took place in the factory in sympathy with the present claimant and other workmen with effect from 9th April, 1981 and a settlement took place on 21st April, 1981,—vide settlement Ex. M-4. The claimant as WW-1 has deposed that he and other workmen used to sit outside the gate of the factory and that the claimant was not allowed to join duty. The settlement Ex. M-4 was also signed by the claimant as General Secretary of the Union. This circumstance goes to show that the claimant remained outside the gate of the factory from 9th April, 1981 to 21st April, 1981 because strike in the factory was going on as he along with other workmen was suspended. He participated in the negotiation with the Management and ultimately the settlement was arrived at on 21st April, 1981 which was signed by him as General Secretary of the Union and on that very date, the name of the claimant was struck off from the roll by Management on the ground that he had failed to join duty on basis of the letters, dated 7th April, 1981 and 8th April, 1981. When the claimant was present at the gate of the factory from 9th April, 1981 to 21st April, 1981 and not being allowed to join duty by giving him full back wages with continuity of service. It cannot be held that the claimant abandoned his job, specially when these letters were not issued in conformity with the provisions of the Industrial Employment (Standing Order) Punjab (Haryana First Amendment) Rules, 1969. The provision of Rule 16 (4) of Industrial Employment (Standing Orders) Punjab (Haryana First Amendment) Rules, 1969, lay down that if the workman remains absent without sanctioned leave, he shall lose his lien on his appointment unless he returns within 40 days of the commencement of the absence and explain to the satisfaction of the Manager the reason of his absence. These provisions do not help the management because the claimant was not being allowed to join duty with full back wages and continuity of service and the letters, dated 7th April, 1981 and 8th April, 1981 were not in accordance with Industrial Employment (Standing Orders) Punjab (Haryana First Amendment) Rules, 1969 nor the letter dated 10th April, 1981 sent by the claimant to the Management was considered. In the ruling reported as *Ram Bhuwal Thakur Prasad and Phoenix Mills*, 1976 (1) LLJ-page 93, it is laid down that the employees was entitled to offer explanation for absence and opportunity to be heard must be provided before legal fictions of abandonment of service come into play. In the ruling reported as *G.T. Lad and others and Chemicals and Fibres of India*, 1979-I-LLJ-page 257, it is laid down that the abandonment by the workman is always a question of fact and that the management by imposing unilaterally a new term of employment cannot convert the absence in to abandonment of employment. Under all these circumstances, it is held that the management has failed to prove that the claimant abandoned his job by remaining absent from duty. The issue is decided accordingly against the management.

Issue No. 2.—

11. It was argued on behalf of the Management that the provisions of Section 25-F of the Industrial Disputes Act, were complied with by the Management. Reliance was placed on the rulings reported as *Rajasthan Canal Project, Vijaynagar circle, Through State of Rajasthan Versus Rajasthan canal Rastriya Mazdoor Union, Suratnagar and another*, 1976-II-LLJ-page 25, in which it is laid down that merely the readiness on the part of the employer to make payment of the retrenchment compensation is not sufficient, but there must be either an offer or tender or actual payment to the workman concerned. The representative of the workman argued that these provisions were not complied with and that the receipts/voucher Ex. M-10 were forged documents. Reliance was placed on the rulings reported as *Santosh Gupta Versus State Bank of India*, 10980II-LLJ-page 72, *Udaipur Mineral Development Syndicate Pvt. Ltd. Bhilwara and M.P. Davel and another*, 1975-II-LLJ-499, *Ramani Mohan Industries Private Limited and Second Industrial and others*, 1981-II-LLJ page 363, *Mohan Lal Versus Bharat Electronics Limited*, 1981-II-LLJ page 71, and *Naresh Chandra Das Versus Seventh Industrial Tribunal and others*, 1982-II-LLJ page 64, in which it is laid down that the provision of Section 25-F of the Industrial Dispute Act is mandatory and in case of non-compliance, the termination becomes illegal. The question for determination is whether the provisions of Section 25-F of the Industrial Disputes Act, 1947, were complied with by making an offer or tendering of the actual payment to the workman concerned. The Management has examined MW-1 Shri O.P. Sharma Time Office Incharge who stated that he

prepared voucher/receipt Ex.M-10 on 21st April, 1981 and offered the amount to the claimant on 28th April, 1981 but he refused to accept the same. MW-6 Shri Shesh Nath corroborated his version. It is alleged that the document, Ex. M-10 (receipt/voucher) were prepared on 21st April, 1981 and that claimant had refused to accept the amount on 28th April, 1981. These documents were not mentioned in the written statement nor MW-3 Shri S.N. Tiwari Director, nor Shri R.S. Sharma MW-4 Manager of the respondent deposed regarding the same. These documents were produced for the first time in evidence of MW-5 Shri O.P. Sharma Time Office Incharge on 20th December, 1982. If these documents actually existed on 1/28/4/1981 the same must have been mentioned in the written statement filed on 3rd February, 1982 because on the basis of these documents, the management want to show that the provisions of section 25-F of the Industrial Disputes Act, 1947 had been complied with. The circumstances that these documents were not referred to in the written statement nor by MW-3 Shri S.N. Tiwari Director nor MW-4 Shri R.S. Sharma and were produced on 20/12/1982 by MW-5 Shri O.P. Sharma to show that these documents cannot be called genuine documents. Further, the conciliation proceedings took place and Ex. W-4 is the copy of those proceedings dated 3-6-1981. In those proceedings no plea was taken by the Management that amount was offered to the claimant on the basis of the voucher/receipt Ex.M-10. These proceedings also shows that these documents have allotted not in existence on 3rd June, 1981. Moreover, the claimant while appearing as WW-1 stated that no amount was offered to him on the basis of the voucher/receipt Ex. M-10. As such the argument raised by the representative of the workman to the effect that these documents were not genuine documents is not without force. Consequently the management has failed to prove that the provisions of Section 25-F of the Industrial Dispute Act were complied with. As a consequence, it is held that the termination of services of Shri Ram Chander was not justified and in order and as such the claimant is entitled to reinstatement with full back wages and continuity of service. The award is passed accordingly.

R. N. BATRA,

Dated the 30th October, 1984

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Endst. No. 1127, dated the 31st October, 1984.

Forwarded (four copies) to the Commissioner and Secretary to Government Haryana, Labour and Employment Department, Chandigarh as required under section-15 of the Industrial Disputes Act, 1947.

R. N. BATRA,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

The 20th December, 1984

No. 9/5/84-6 Lab./8945.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad, in respect of the dispute between the workmen and the management of M/s Delta Tools Private Limited, Plot No. 139, Sector 24, Faridabad :—

BEFORE SHRI R.N. BATRA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA, FARIDABAD

Reference No. 246/82/Reference No. 452 of 1982

between

THE MANAGEMENT OF M/S DELTA TOOLS PRIVATE LIMITED, PLOT NO. 139, SECTOR 24, FARIDABAD AND ITS WORKMEN

Present—Shri R.P. Singh, for the workmen.
None, for the management.

AWARD

In exercise of powers conferred by clause (d) of sub-section (I) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute between the management of M/s Delta Tools Private Limited, Plot No. 139, Sector 24, Faridabad and Its workmen, to this Tribunal, for adjudication :—

Whether the workmen are entitled to the payment of wages for the lock-out period commencing from 29th April, 1982 ? If so, with what details ? Both references Nos. 246 and 450 of 1982 were consolidated on 8th March, 1983.

Notices were issued to both the parties. The workmen in their claim statement dated 10th August, 1982 pleaded that the workmen were working in the respondent factory and did not give any chance of complaint, but

the management was very much irregular in payment of monthly wages and had been indulging in unfair labour practice. It was further alleged that the Management declared lock-out since 1982 and continued till date and that notice of lock-out dated 29th April, 1982 was false, when the workmen submitted their demand notice dated 30th April, 1982. It was further alleged that illegal and unauthorised lock-out commencing from 29th April, 1982 was prohibited by the Haryana Government,—vide orders dated 19th July, 1982, but the lock-out was being continued despite the prohibition imposed by the Haryana Government. It was, therefore, prayed that the workmen be given full wages for the lock-out period commencing from 29th April, 1982.

3. It may be mentioned that the Management filed their written statement on 29th September, 1982 but later on none appeared on its behalf inspite of service by registered post and as such *ex parte* proceedings were ordered against them on 23rd August, 1984.

4. The workmen have examined WW-1 Shri R.K. Halder, who stated that he was Organising Secretary of the Union and that in the year 1982, he was member of the Union. He further stated that in the first instance, the Management delayed the payment of wages for the month of February 1982,—vide letter Ex. W-1 and that payment of wages for the month of March, 1982 was also delayed,—vide letter Ex. W-2. He further stated that the wages for the month of April, 1982 were not given, regarding which later on letter Ex. W-3 was written by the Management. He further stated that in order to avoid the payment of wages, the Management had declared lock-out. He further stated that he was never suspended nor any warning was given to him nor any charge sheet was served on him. He then stated that demand notice was served by them immediately after the lock-out and that the Government had prohibited the lock-out and copy of the notification in that respect was Ex. W-4, but the lock-out was still in force and that the workmen were entitled to the wages for the lock-out period because the lock-out was illegal. In the letter Ex. W-1 it is mentioned that the management promised to pay the wages for the month of February, 1982 on 19th March, 1982. In the letter Ex. W-2, it is recited that the management promised to pay the wages for the month of 1982 by 30th April, 1982. In the letter Ex. W-3, it is mentioned that the management promised to pay the wages for the month of April, 1982 by 22nd May, 1982. According to notification dated 19th July, 1982 copy Ex. W-4, the Haryana Government prohibited the continuance of lock-out declared by the Management. The *ex parte* testimony of Shri R.K. Halder and recitals made in the documents Ex. W-1 to W-4, go to show that the lock-out has been prohibited by the Haryana Government but the same is still in force and the evidence has been lead to the effect that the same is illegal. The management has not cared to rebut the evidence because *ex parte* proceedings were ordered against them on 23rd August, 1984, as already mentioned above. Consequently, the workmen of the respondent factory are entitled to payment of full wages for the lock-out period commencing from 29th April, 1982. The award is passed accordingly in both the references.

The 5th December, 1984.

R.N. BATRA,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Endst. No. 1560, dated 5th December, 1984.

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

R.N. BATRA,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

The 30th October, 1984.

No. 9/5/84-6Lab/7155.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workmen and the management of M/S Haryana Rang Udyog Deepalpur Road, Bahalgarh (Sonapat).

BEFORE SHRI B.P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK

Reference No. 128 of 1981

Between

SHRI YASIN KHAN, WORKMAN AND THE MANAGEMENT OF M/S HARYANA RANG UDYOG
DEEPALPUR ROAD, BAHALGARH (SONEPAT).

Present :—Shri S.N. Solanki, A.R. for the workman.
Shri S.K. Adhlakha, Manager for the management.

AWARD

1. In exercise of the powers conferred by clause(c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute, between the workman Shri Yasin Khan and the management of M/s. Haryana Rang Udyog, Bahalgarh (Sonapat), to this Court, for adjudication, —vide Labour Department Notification No. ID/SPT/126/81/52285, dated 22nd October, 1981 :—

Whether the termination of service of Shri Yasin Khan was justified and in order ? If not, to what relief is he entitled ?

2. On receipt of the order of reference, notices were issued to the parties as usual. The workman alleged that he was working as a Turner since 10th January, 1968 on monthly wages of Rs. 400 and that the management did not pay him bonus for the year 1975-76, 1976-77 and 1977-78. So, the workman went on strike on 30th August, 1977 and the management did not appear for reconciliation proceedings before the Labour cum-Conciliation Officer, Sonapat and the Hon'ble High Court of Punjab and Haryana dismissed the Writ Petition filed by the management declaring the strike of the workmen as illegal and that the Haryana Government prohibited the strike on 20th December, 1977 and some workmen on strike resumed their duties but the petitioner was not allowed to do so and on 28th December, 1977 the petitioner and other workmen were chased by the Gundas of the management and did not allow to resume duty and so the petitioner and other workmen were constrained to stage a dharna at the gate of the factory, which resulted in firing by the management on 11th February, 1978, in which, Shri Shiv Charan Sharma, Secretary of the union was killed and that the services of the workman have been terminated in gross violation of the provisions of section 25(F) of the Industrial Disputes Act.

3. A detailed reply has been filed by the respondent/management, in which, the preliminary objections taken are that the demand notice is belated one. On merits, it is controverted that the petitioner joined the employment of the respondent in the month of January, 1968 but on 3rd April, 1968. It is further alleged that after prohibition of the strike by the Government of Haryana, the workman did not report for duty and as such bonus as claimed was not paid to him and others and that after prohibition of the strike, the workman did not resume duty but staged a dharna and did not allow the other loyal workmen to resume their duties. It is denied that Shri Shiv Charan Sharma was murdered by the management. There is a plea that the workman remained gainfully employed elsewhere after not resuming his duties with the respondent.

4. In the rejoinder filed, the workman controverted the various pleas taken by the respondent and asserted the veracity of the allegations made in the claim statement.

5. On the pleadings of the parties, the following issues were settled for decision on 31st August, 1982 :—

1. Whether demand of the workman for his reinstatement is highly belated ? If so, to what effect?
2. Whether the termination of service of Shri Yasin Khan was justified and in order ? If not, to what relief is he entitled ?

My findings on the issues framed are as under :—

Issue No. 1

6. A few facts emerge unscathed from the file. The same are that the workman was prevented by the management resuming his duties on 28th December, 1977. So in a way, as per the allegations of the workman, his services were terminated by the management on the said date. The demand notice, as per the date on the same, was raised on 9th June, 1981 i.e. after a lapse of $3\frac{1}{2}$ years from the alleged date, on which the workman was prevented by the management from resuming his duties. Since these dates are undisputed, I need not dig into the oral evidence adduced by the parties on this issue. The learned Authorised Representative of the workman Shri S.N. Solanki contended that since no limitation is prescribed for raising a demand notice by the workman or making of a reference by the Government to the Labour Court, so a delay of $3\frac{1}{2}$ years cannot be fatal to the workman.

7. On the other hand, the learned Authorised Representative of the management contended that even if no limitation is prescribed for reference of disputes to an Industrial Tribunal/Court ; even so, it is only reasonable that dispute should be referred as soon as possible after they have arisen and conciliation proceedings have failed, particularly, in cases of discharge or dismissal of the workman. In the same vein, he contended that there

is no explanation in the demand notice about the delay in raising the same. Had the workman been prevented by a reasonable cause in raising the demand notice, this Court could go into the same and give a finding as to whether the delay was unavoidable or intentional. He further contended that in a running industry, as the respondent company was, such dispute should be referred with all expedition, because in case of delay, the industry is burdened with unnecessary expenses in case reinstatement of the workman is ordered by the Court after many years. He also contended that the industry is not expected to run the same with skelton work force, awaiting the disposal of the reference by the Court. In the present case, the reference was delayed by more than 3½ years, which in my opinion, was not reasonable time. It is inconceivable that a hungry belly will wait for 3½ years before raising a demand notice. Had the workman been keen to resume his duty and as per his allegations he was prevented by the management for doing so, with the help of its musclemen, the workman could reasonably approach the competent authority in that behalf and put forth his grievance before it. The fact that the workman slumbered for a long period of 3½ years goes to prop up the plea of the respondent that the workman deliberately absented and did not resume his duties after the lock out was lifted by the respondent. So, in my opinion, there was inordinate delay in raising demand notice by the workman and the resultant reference there upon by the Government after failure of re-conciliation proceedings. On behalf of the respondent 1959 II LLJ 26 Shalimar Works, Ltd V/s. its workman was cited. The observations made in this authority substantially go to prop up the plea of the respondent/management. So, this issue is answered against the workman.

Issue No. 2.

8. The plea of the workman is that after the Government of Haryana had prohibited the strike on 20th December, 1977, many workmen resumed their duties but the aggrieved workman and many others were not allowed to resume their duties by the management, who let loose their *gundas* at the factory gate to scare away the workman and in the melee, which followed, many workmen were injured. In support of these allegations, workman appeared as his own witness as WW-1, who stated that on 11th February, 1978 striking workmen were fired at by the management in which one worker was killed and many were injured and thereafter he went to the gate of the factory to resume his duties but he was not allowed to do so. On the other hand, the management examined MW-2 Shri Fateh Singh, Head Time Keeper, who stated that the workman came to the factory on 30th August, 1977 and thereafter he never turned up at the gate of the factory. Similarly MW-3 Shri Sajjan Singh also denied the suggestion that the workman was not allowed to resume his duties after the strike had been prohibited by the Government of Haryana. Interestingly the workman admitted that the management was ready to take the workman on duty but he refused to resume his duty as the case was pending in the Labour Court.

9. As already observed, there was no retrenchment of the workman as alleged by him, because if the workman had been prevented from resuming his duties after prohibition of the strike by the Government of Haryana, there are no reasons that the workman would not have gone to the appropriate authorities. The fact that the workman slept for a long period of 3½ years before raising the demand notice, goes to show that the workman was not keen to resume his duty after prohibition of strike, because he was gainfully employed elsewhere. This fact is not denied by the workman, who admitted that he was employed with M/s. Hasitapur Metal since 1st April, 1979. So, in my opinion, there was no termination of service of the workman and as such this issue goes against the workman.

10. In the light of my foregoing discussion, there is no escape from the conclusion that the present reference is inordinately delayed and that there was no termination of service of the workman and as such this reference is bad in law. The same is answered and returned accordingly. In view of the peculiar circumstances of the case, there is no order as to costs.

Dated 7th September, 1984.

B. P. JINDAL,

Presiding Officer,
Labour Court, Rohtak.

Endst No. 128/81/3244

Dated 1st October, 1984

Forwarded (four copies) to the Secretary to Government, Haryana, Labour & Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,

Presiding Officer,
Labour Court, Rohtak.